

ANALYSIS OF ORIGINAL BILL

Author: Kehoe Analyst: Darrine Distefano Bill Number: SB 1832
 Related Bills: See Legislative History Telephone: 845-4142 Introduced Date: February 24, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records/Waiver of Fees For Copy of Specified Records

SUMMARY

This bill would waive the fee for copies of public records under specified circumstances.

PURPOSE OF THE BILL

According to author's office, the purpose of this bill is to mirror the federal Freedom of Information Act and to broaden the public's access to information on state and local government activities.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2007.

POSITION

Pending.

ANALYSISFEDERAL/STATE LAW

The Freedom of Information Act (FOIA) generally provides that any person has the right to access to federal agency records or information. All agencies of the Executive Branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records or portions of them that are protected from disclosure by law.

For the purposes of fees only, FOIA divides requesters into three categories. Commercial requesters may be charged fees for searching for records, "processing" the records (i.e., reviewing them to determine the possible applicability of FOIA exemptions), and photocopying them. Fee waivers are limited to situations where a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals that seek their

Board Position: _____ S _____ NA _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA <u> X </u> PENDING	<table> <tr> <th data-bbox="946 1782 1344 1833">Department Director</th><th data-bbox="1344 1782 1572 1833">Date</th></tr> <tr> <td data-bbox="946 1833 1344 1965">Selvi Stanislaus</td><td data-bbox="1344 1833 1572 1965">5/22/06</td></tr> </table>	Department Director	Date	Selvi Stanislaus	5/22/06
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own records usually do not meet this standard because such disclosures usually will not result in any increase of the public's understanding of government operations and activities.

Under the California Public Records Act (PRA), every person is allowed to inspect and obtain copies of public records that are not exempt from disclosure. If a portion of the record is confidential, the person generally may obtain the remainder of the record after that portion has been redacted. The state agency is allowed to charge a fee for covering direct costs of duplication or a statutory fee. The cost of duplicating an electronic public record is limited to the direct cost of producing a copy of a record in electronic format. The requestor must bear full production costs if the request is made when the record is not scheduled to be available, or if the request would require data compilation or programming.

Executive Order S-03-06 requires state agencies to establish or review their written guidelines for accessibility of records; identify and designate members of their staff who are primarily responsible for receiving and responding to PRA requests; and submit a written certification to the Legal Affairs Secretary that the designated staff members have been trained on the responsibilities and requirements of the PRA.

THIS BILL

This bill would add the following terms and definitions to the PRA:

- “Commercial interest” is a request that intends to further a use or purpose of a commercial, trade, or for-profit interest of a requestor or person on whose behalf a request is made.
- “Representative of the news media” is any person that actively gathers information about current events or of current interest to the public for an entity that is organized and operated to publish or broadcast that information to the public. News media includes, but is not limited to, television or radio stations broadcasting to the public and publishers of periodicals that make their products available for purchase or subscription by the general public. A freelance journalist is a representative of the news media if he or she can demonstrate a reasonable basis for publication even if not employed by it or he or she has a past publication record sufficient to create a reasonable expectation of an ability to publish.

This bill would require a state or local agency to make a record available even if the fee is waived.

This bill would allow a fee to be waived if the disclosure of the record is both of the following:

- In the public interest because it is likely to contribute to the public understanding of the operations or activities of the government.
- Not primarily in the commercial interest of the requestor.

This bill would provide the following guidelines for a state or local agency to determine whether a disclosure of a public record is in the public interest.

- The subject of the request: The subject of the requested records must concern identifiable operations or activities of state or local government with a direct and clear connection.
- The informative value of the information to be disclosed: The portions of records to be disclosed must be informative about government operations or activities that contribute to an increased public understanding of those operations or activities.

- The contribution to an understanding of the subject by the public is likely to result from the disclosure: The requester's expertise in the subject area, ability, and intention to convey information effectively will be considered. Representatives of the news media will be presumed to meet this consideration.

This bill would provide the following guidelines for a state or local agency to determine whether a disclosure of a public record is not primarily in the commercial interest of the requestor.

- The existence and magnitude of the commercial interest: State and local agencies will consider any commercial interests of the requestor or any person acting on behalf of the requestor that would be furthered by the requested disclosure.
- The primary interest in disclosure: The waiver of a fee is justified if the public interest is greater in magnitude than any speculative commercial interest in having the record disclosed.

This bill would require a request for fee waiver to be submitted along with the request for the records. If the waiver has insufficient information, a state or local agency is required to identify the additional information required and provide the requestor an opportunity to supplement the request.

This bill would require a denial of a fee waiver to be made in writing and include the names and titles or positions of the persons responsible for the denial.

A court action regarding denial of a fee waiver would be determined "de novo" (anew). The court may award court costs and reasonable attorney's fees to a prevailing plaintiff.

This bill would require local agencies and school districts to be reimbursed if this act contains costs mandated by the state.

IMPLEMENTATION CONSIDERATIONS

Discussions with the author's staff indicate this bill is intended to assist small public interest organizations that have limited budgets obtain information for the public about activities affecting the public's health, environment, and quality of life. The majority of PRA requests made to Franchise Tax Board (FTB) are for the purpose of understanding the operations and activities of FTB and do not normally impact the health, environment, or quality of life of the citizens of California. Due to the requirements of the bill, it is assumed that the increase in requests to FTB would be from representatives of the news media, not from the general public and therefore the department's programs or operations would not be significantly impacted.

TECHNICAL CONSIDERATIONS

On page 3, line 7, and page 5, line 35, the word "new" should be spelled "news" to identify the news media.

On page 3, line 10, the word "expection" is misspelled. The correct spelling should be "expectation."

LEGISLATIVE HISTORY

AB 2937 (Shelley, 2001/02) would have clarified that the public would not be required to pay costs for segregating or deleting portions of records exempted from disclosure when requesting an electronic record. The bill deleted these provisions on April 16, 2002 and was later chaptered to add a definition of entities for public records.

AB 179 (Bowen, 1997/98) would have required any agency that has public information to provide the information in an electronic format upon request and that direct costs of duplication include the costs related to duplicating the electronic record. This bill was vetoed by Governor Pete Wilson. The veto message states, "A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it 'unreasonable.' Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done."

PROGRAM BACKGROUND

FTB, under the PRA, allows a requester to review a non-exempt record during normal business hours. There is no charge to review a record.

All requests for copies of records are to be made in writing; FTB also provides records in response to oral requests. Records requested are reviewed by FTB's Disclosure Section to determine whether they contain any exempt material.

FTB is allowed to charge a fee for copies of records as stated under the PRA.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

Darrine Distefano
Franchise Tax Board
845-4142
darrine.distefano@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov